

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
WAVERLY FLORISTS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales & Use Tax
Taxes under Article(s) 28&29 of the
Tax Law for the ~~XXXXXX~~ Period(s)
May 30, 1973.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
He is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of February, 1979, He served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Waverly Florists, Inc.

~~(XXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Waverly Florists, Inc.
c/o Fischgrund & Rifkin
One Old Country Road
Carle Place, New York 11514
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(XXXXXX)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

23rd day of February, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WAVERLY FLORISTS, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use Tax :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
May 30, 1973.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that

~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 23rd day of February, 1979, ~~he~~ served the within

Notice of Determination by ~~XXXXXX~~ mail upon Julian Fischgrund,

CPA (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Julian Fischgrund, CPA
c/o Fischgrund & Rifkin
1 Old Country Road
Carle Place, NY 11514

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

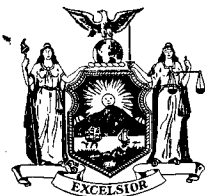
That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

23rd day of February, 1979

Marilyn J. Papineau

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

February 23, 1979

**Waverly Florists, Inc.
c/o Fischgrund & Rifkin
One Old Country Road
Carle Place, New York 11514**

Gentlemen:

Please take notice of the **Determination**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138, 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty
Supervisor of Small Claims

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WAVERLY FLORISTS, INC.	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period May 30, 1973.	:	

Applicant, Waverly Florists, Inc., c/o Fischgrund and Rifkin, One Old Country Road, Carle Place, New York 11514, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period May 30, 1973 (File No. 15249).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 27, 1977 and continued on May 18, 1978. Applicant appeared by Julian Fischgrund, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. and Abraham Schwartz, Esq., of counsel).

ISSUE

Whether applicant, the seller in a bulk sales transaction, is liable for sales taxes determined to be due from said bulk sale.

FINDINGS OF FACT

1. On February 19, 1976 as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for taxes due of \$5,390.00, plus penalty and interest of \$1,940.40, for a total of \$7,330.40.

2. Applicant, Waverly Florist, Inc., operated a retail florist business at 1322 Avenue U, Brooklyn, New York. On May 30, 1973, applicant executed an agreement to sell the aforementioned business to Cherokee Land Development Corp. and on said date, the sale took place.

3. The sales agreement provided that the furniture, fixtures, equipment, trucks and all other fixed assets and lease-hold improvements had an agreed to valuation of \$77,000.00. The agreement also provided (at paragraph "13") that "The purchaser shall pay the New York State Sales Tax applicable to this transaction and shall file all necessary forms in connection therewith."

4. Neither the purchaser, Cherokee Land Development Corp., nor the seller, Waverly Florists, Inc., notified the Sales Tax Bureau of the proposed sale, as required by section 1141(c) of the Tax Law. On audit, the Sales Tax Bureau's examiner found that applicant failed to collect sales tax on the taxable personal property transferred; therefore, the Sales Tax Bureau, issued the aforementioned Notice against applicant, based on the \$77,000.00 valuation of the furniture, fixtures, equipment, trucks and other fixed assets and lease-hold improvements.

5. Applicant contended that, in view of paragraph 13 of the sales agrument, the Sales Tax Bureau should have commenced procedures to collect the sales tax due on the bulk sale against the purchaser.

CONCLUSIONS OF LAW

A. That section 1132(a) of the Tax Law provides that every person required to collect tax shall collect the tax from the customer when collecting the price, amusement charge, or rent to which it applies.

B. That section 1133(a) of the Tax Law provides that every person required to collect tax shall be personally liable for the tax imposed, collected or required to be collected.

C. That applicant, Waverly Florists, Inc., was required to collect and was liable for the sales tax determined to be due on the sale of its taxable business assets, pursuant to the meaning and intent of sections 1132(a) and 1133(a) of the Tax Law.

D. That the application of Waverly Florists, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued February 19, 1976 is sustained.

DATED: Albany, New York

February 23, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER